

Statement of Delegate Vincent F. Callahan

I am pleased to report to JLARC that the Topic Selection Subcommittee has completed its work.

I would also like to thank the Subcommittee members and other members of the Commission who assisted in our work. Almost everyone participated in at least one meeting of the Subcommittee and most of you attended all of them.

The subcommittee considered almost 40 different topics. We consolidated some of these topics and we also rolled a few into existing studies. We come to you today with recommendations for six new JLARC studies.

- An expansion of the ongoing JLARC transportation studies to include a comprehensive review of the maintenance program and the equity of funding.
- A review of information systems development. As you know, millions have been lost on problems procuring systems and we felt that looking at this across the State would be very helpful.
- A study of the use of indigents in research at the teaching hospitals.
- A workforce training study. As you know, we have programs all over the place and felt that some streamlining and consolidation might be possible.
- We are also recommending a death penalty study, particularly regarding the use of DNA evidence. While this would be controversial, we think a systematic JLARC study would very useful.
- Finally, we recommend a review of gubernatorial authority to establish agency head separation packages.

If these studies are approved, Mr. Leone will come back to us at our April planning meeting with detailed study plans.

I move that the Commission approve the Subcommittee's recommendations.

JLARC Topic Selection Subcommittee Decisions, November 13, 2000

Recommend to the Full Commission?

Yes
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No
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Expanded JLARC Transportation Studies. JLARC is currently studying several transportation issues. Two new studies have been proposed. One focuses on the adequacy of highway maintenance. The second focuses on the equitable allocation of highway funds between systems and between jurisdictions.

Yes
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No
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Information Systems Development Study. In recent years numerous State systems development projects have encountered problems, ranging from delays and cost overruns to the abandonment of multi-million dollar projects. This study would review the procurement and development of automated systems by the State

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No
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Indigent Participation in Medical Research at Teaching Hospitals. This study would review the extent to which indigent populations participate in research trials at Virginia teaching hospitals and whether or not they are adequately protected by current procedures.

Yes
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No
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Workforce Training Study. This review would focus on whether the Commonwealth is diluting its workforce training efforts by the dispersion of services among different providers. The study would analyze the feasibility of streamlining or consolidating services.

Yes
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No
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Death Penalty Review. This review would focus on two principal issues, possibly in two studies: (1) the fairness of Virginia's judicial review process for persons sentenced to death, and (2) the disparity between jurisdictions in pursuing the death penalty. Both reviews would also examine whether DNA evidence is used in an appropriate and consistent manner.

Expanded JLARC Education Studies. JLARC is currently studying local expenditures for elementary and secondary school education that exceed the State's Standards of Quality (SOQ). The Subcommittee expressed an interest in additional staff focus on two issues: (1) the shortage of schoolteachers in Virginia and (2) the ability of localities to pay for education costs. Staff were already addressing these issues and – based on the Subcommittee's interests – have begun to devote additional attention to them. The teacher shortage issue for the study focuses on the recent impact of the shortage on educational expenditures.

Separation Policies. The Subcommittee recommends that JLARC staff review gubernatorial authority to establish agency head separation packages.

EXPANDED JLARC TRANSPORTATION STUDY

In its discussions of study topics, the Commission raised several additional study issues in the highway transportation area. These issues are in two general areas: (1) the adequacy of the State's approach to highway maintenance, and (2) the equity of funding for highway construction and maintenance. This paper discusses the potential scope for studies to address these issues.

Background

The Virginia Department of Transportation (VDOT) is responsible for two major programs in support of the State's highway system, which at 56,504 miles is the third largest State maintained highway system in the nation. First, with the construction program, VDOT contracts to build new highways, bridges, tunnels, and other highway facilities. With its maintenance program, VDOT maintains the existing facilities to ensure their continued availability to the public. Other minor activities generally support or are related to the construction or maintenance programs.

Virginia has about 66,644 miles of major highways and local streets. Major highways include the interstate system (1,118 miles), and the primary system (8,006 miles). Local streets include the secondary system in the counties (47,046 miles), and the urban system in the cities and towns (10,140 miles). The State does not maintain streets in the urban system but does maintain local streets in all but two of the counties.

In furtherance of its programs, VDOT will spend about \$2.8 billion in FY 2001. Of this total, \$1.6 billion is for construction, and \$821 million is for maintenance. Remaining amounts are for planning, debt service, and other activities. In addition, the State provides \$27 million for local streets to two counties not in the State highway system, and an additional \$188 million to municipalities with populations greater than 3,500 for local street maintenance. Revenue for these expenditures comes from federal and State sources. In FY 2001, for example, VDOT will receive \$800 million in federal highway funding, and \$1.2 billion from all State sources, including gasoline taxes, the State general fund, and tolls.

Issues

The issues raised by members would likely be addressed in two separate studies, one focused on maintenance and the other focused on the equity of funding. This would enable staff to address all of the issues prior to the 2002 Session of the General Assembly. The issues for the two studies are the adequacy of highway maintenance the equity of highway funding.

Issues – Adequacy of Highway Maintenance

1. Does VDOT demonstrate that maintenance is the first priority for funding as required by §33.1-23.1 of the *Code of Virginia*?
2. Does VDOT's organizational and management structure support the highway maintenance program?
3. Are staffing, equipment, materials, and other resources adequate to properly maintain all highway assets?
4. Does VDOT have appropriate processes to measure and evaluate the quality of its maintenance work on State highways?
5. Does VDOT use an appropriate mix of State forces and private contractors for highway maintenance? Could asset management be expanded beyond the interstate system and be used effectively statewide?

Issues – Equity of Highway Funding

1. Is the allocation of funding between highway maintenance and construction consistent with the current and anticipated needs on Virginia's highway system?
2. Is the allocation of funding among the highway systems and special programs equitable, and consistent with the current and anticipated needs on Virginia's highway system?
3. Is the allocation of highway funding among Virginia counties, cities, towns, and regions equitable, and consistent with the current and anticipated needs on Virginia's highway system?

Proposed Study Approach

As stated earlier, it is anticipated that both new highway studies could be completed prior to the 2002 Session. Specific plans and schedules for study completion would be presented to the Commission at its April 2001 planning meeting.

JLARC INFORMATION SYSTEMS DEVELOPMENT STUDY

The Topic Selection Subcommittee of the Commission identified the recent problems with procurement or development of automated systems as a significant concern. Member interest in this study is the result of the substantial costs associated with major systems, and the adverse impact on citizens and taxpayers when systems development efforts fail. This paper discusses the potential scope for a study to examine the State's systems development process.

Background

Automated systems are an essential resource for State agencies, providing support for both administrative and program functions. These systems also represent a significant cost for the State. In 1996, the Council on Information Management (now the Department of Information Planning), estimated the Commonwealth's direct information technology costs to be in excess of \$495 million annually. The State has had standards and processes to guide procurement and development of systems for many years. Agencies have flexibility in how they develop systems, however, and have used many different models, including "turnkey" procurement from vendors, modification of systems from other states, and in-house development with agency staff. While agencies have successfully deployed some systems, the State has experienced significant problems with the planning, funding, or development of major systems, including:

- The Medicaid Management Information System (MMIS) at the Department of Medical Assistance Services,
- The Application Benefit Delivery Automation Project (ADAPT) and the On-Line Automated Services Information System (OASIS) at the Department of Social Services,
- The Virginia Information System Integrated Online Network (VISION) at the Department of Health,
- The Integrated Human Resource Information System (IHRIS) at the Department of Human Resources Management,
- The Offender Management System (OMS) at the Department of Corrections,
- and the document management system at the Department of Transportation.

Problems encountered with these systems have ranged from delays and cost over-runs to the abandonment of unfinished and unusable products, sometimes after the investment of millions of State dollars.

Issues

The concerns raised by members centered primarily on the recent difficulties or failures of several systems development efforts by State agencies. The issues to be addressed in this study are:

1. What causes have contributed to the recent system development failures in State agencies?
2. Does the State have adequate systems development standards and procedures to guide agencies? Are those standards enforced?
3. Do agencies have adequate staffing, funding, and expertise to support system development activities?
4. Does the State's central information technology organization support agency system's development efforts? Is there adequate technical assistance to and appropriate oversight of agencies? Is there accountability for systems development projects?
5. Are there best practices in other states or the private sector that the State could adopt to improve the systems development process? Are there alternative models for systems development that would reduce the State's risks when procuring or developing new systems?

Proposed Study Approach

It is anticipated that JLARC's review of problems regarding the procurement or development of automated systems could be completed prior to the 2002 Session, depending on the level of review directed by the Commission and the extent to which other systems development problems may be revealed during the course of the study. Specific plans and schedules for study completion would be presented to the Commission at its April 2001 planning meeting.

INDIGENT PARTICIPATION IN MEDICAL RESEARCH AT TEACHING HOSPITALS

During the Commission's discussion of study topics, an issue was raised concerning the prevalence of medical research on Virginia's indigent population at the State's teaching hospitals. This issue could be addressed by determining the role of the State in ensuring maximum protection for all Virginians who participate in medical research, including the most vulnerable and/or indigent citizens.

Background

In Virginia, there are three major medical research universities: the Medical College of Virginia, the University of Virginia Health System, and the Eastern Virginia Medical School. Each year, a variety of government agencies (such as the National Institute of Health and the Food and Drug Administration), pharmaceutical companies, health maintenance organizations, and organizations that develop medical devices or equipment provide millions of dollars for medical research projects at these institutions. Medical research, also called clinical trials, is the scientific term for a test or study of a drug or medical device in people. These trials are used to determine whether new drugs or treatments are both safe and effective.

The major concern with moving forward with cutting edge research, however, is the protection of human subjects. All clinical trial participants are supposed to be protected with rigorous oversight procedures and by informed consent based on full disclosure of potential risks and benefits. However, the public confidence has been shaken by a recent death of a participant in a gene-transfer trial at a major university in Pennsylvania in which human subjects were not adequately protected. Closer to home, in January 2000, the federal Office of Protection from Research Risks (OPPR) temporarily suspended research involving human subjects at the Medical College of Virginia. According to university officials, OPPR cited administrative deficiencies in the internal review board, although the office found no case in which research study participants were injured.

In a recent article in the New England Journal of Medicine, the U.S. Secretary of Health and Human Services stated that the need to strengthen protection of human subjects is rooted in four recent disturbing trends in clinical research:

- First, researchers may not be doing enough to ensure that subjects fully understand all the potential risks and benefits of a clinical trial.
- Second, too many researchers are not adhering to standards of good clinical practice. The Food and Drug Administration has identified

cases at the nation's most prestigious research centers in which researchers failed to disqualify unsuitable subjects, failed to report adverse events as required, failed to ensure the protocol was followed, and failed to ensure the study staff had adequate training.

- Third, institutional review boards (IRBs), the key element of the system to protect research subjects, are under increasing scrutiny. This is the problem that surfaced at the Medical College of Virginia and resulted in the hiring of a new review board at a cost of \$1 million annually.
- Fourth, the nature of clinical trials is changing. Potential conflicts of interest and ethical dilemmas are increasing. Researchers and companies working together can blur the boundaries between a researcher's self interest and scientific judgement.

Issue

This issue raised by a member would likely be addressed by a study which focused on determining the role the State should have in ensuring maximum protection for all Virginians who participate in medical research, including the most vulnerable and/or indigent citizens. Potential research questions for this issue include:

1. Is the indigent population disproportionately represented in clinical trials at the medical research universities?
2. What measures do the medical research universities take to ensure these participants fully understand the benefits and risks of the clinical trials and that their receiving needed medical care is not contingent upon participation?
3. Based on independent federal or institutional review boards, what is the nature and prevalence of poor standards of practice at the three major medical research universities?
4. Do the institutional review boards at the medical research universities have adequate resources to protect human research subjects?
5. Do other states provide additional protections for clinical trial participants that are above and beyond the federal and university requirements?

Proposed Study Approach

It is anticipated that a study of medical research on human subjects at the State's teaching hospitals could be completed prior to the 2002 Session. Specific plans and schedules for study completion would be presented to the Commission at its April 2001 planning meeting.

WORKFORCE TRAINING STUDY

In its discussions of study topics, an issue was raised by the Commission regarding the number of workforce training services in the State, and whether the State is diluting its training efforts by dispersion of providers. This issue could be addressed by identifying and evaluating the types of workforce training services provided by the State, and whether streamlining or consolidating these services would result in increased efficiency and effectiveness. This paper discusses the potential scope for a study to address this issue.

Background

Workforce training services are services that are provided to allow the State's workforce to remain competitive and attract businesses to the State, and to allow certain disadvantaged groups to enter the workforce. Workforce training services provided by the State can be categorized into three groups: (1) services provided to persons with low incomes to allow them to enter the workforce, (2) services provided to the disabled to allow them to enter the workforce, and (3) services provided to the general population to ensure that the State's workforce is competitive and to attract new businesses to the State.

Workforce training services are critical to the State's economy because, as stated in the report of the Governor's Workforce Development Task Force, the competitive advantage of states and communities hinges on the skills of their work forces. A 1997 report stated that "in several regions, including Northern Virginia, Hampton Roads, and the Greater Richmond area, the projected growth of technology jobs is outstripping the State's current capacity to provide skilled workers." In addition, several social and demographic trends provide evidence for the need for a coordinated workforce training system.

In Virginia and in other states, traditional workforce training systems consist of a "patchwork" of federally funded programs that have been created over the past 40 years. This is confusing for both employers and the customers seeking services. Currently, workforce training services in Virginia cross over several secretariats and more than ten agencies, all of which have different funding streams and varying levels of flexibility in their administration. The agencies providing workforce training services include employment-related agencies such as the Virginia Employment Commission, Department of Business Assistance, and Department of Labor; education agencies such as the Community Colleges System; and human services agencies such as the Department of Social Services, Department of Rehabilitative Services, and Department for the Visually Handicapped. This dispersion of workforce training funds and programs can lead to unfocused and uncoordinated training efforts.

A recent federal act – the Workforce Investment Act of 1998 (WIA) – rewrites current federal statutes governing programs of job training, adult

education and literacy, and vocational rehabilitation, replacing them with streamlined and more flexible components of workforce development systems. The goal of the act is to improve coordination between the workforce investment system and the adult education, literacy, and vocational rehabilitation programs and make the system more customer friendly by implementing one-stop shops and providing customers with information on training providers' performance. According to the Virginia Employment Commission's (VEC) web site, the Secretary of Commerce and Trade has been given the responsibility of coordinating this effort and developing a strategic plan for all federal, state, and local workforce efforts. In addition, the VEC has been designated as the lead agency for implementation of the WIA. As a result, the Virginia Workforce Council was developed in 1999, which is charged with leading the broad-based workforce development efforts of the State.

Issue

This issue would likely be addressed by a study that focuses on analyzing the workforce training services provided by the State, and determining the feasibility of streamlining or consolidating these services. Potential research questions for this issue include:

1. Are the funds allocated to the State's workforce training being used effectively, or are they so fragmented and dispersed that they are limiting program effectiveness?
2. How can Virginia's workforce training programs be streamlined to achieve efficiencies and provide services in a more coordinated and effective manner?
3. What is the current status of Virginia's WIA implementation effort? What effect will the WIA have on Virginia's workforce training programs?
4. What risks or benefits would result from consolidating or streamlining workforce training activities?
5. If the workforce training services are consolidated, in which secretariat should they reside?

Proposed Study Approach

Specific plans and schedules for study completion would be presented to the Commission at its April 2001 planning meeting.

DEATH PENALTY STUDY

During its discussions of work topics, the Commission expressed some interest in examining the State's administration of the laws governing the use of death penalty. In Virginia, two major issues have been consistently raised concerning the death penalty. The first concerns the fairness of Virginia's judicial review process for persons sentenced to death. The second issue concerns the wide disparity between jurisdictions in the use of the death penalty. In addition, there is interest in whether DNA evidence is appropriately and consistently utilized.

Background

In the early 1970s, Virginia and other states around the country began to consider new death penalty laws to address the concerns raised by the United States Supreme Court when it voided these statutes in 1972. In 1977, the General Assembly reinstated the death penalty in the Commonwealth but removed the previously existing statutes that mandated this form of punishment for certain crimes, and established an automatic judicial review process for all persons sentenced to die. The latter was done to address the United States Supreme Court's concern that the death penalty had been applied in an arbitrary and capricious fashion.

Since 1977, a total of 113 persons have been convicted of capital offenses and sentenced to die in the Commonwealth of Virginia. Of this group, 80 prisoners (70 percent) have been executed, another 29 prisoners (26 percent) are on death row awaiting execution, and four prisoners died before they could be executed.

Concerns About Restrictions in the Judicial Review Process

Because of the finality of the death penalty, the process of review for these cases in Virginia is extensive. Under current law, the Virginia Supreme Court will automatically review all death penalty cases. If the State Supreme Court upholds the conviction and sentence, the condemned prisoner can petition the United States Supreme Court to review the case. If this request is denied, the prisoner can file a habeas corpus petition with the State Supreme Court. If that petition is denied - - the Virginia Supreme Court has never granted such a petition - - the prisoner can return to the United States Supreme Court and ask for a review of the case. If this court refuses to review the case, the prisoner can file a claim in federal court and receive an automatic stay of execution. If this court lifts the stay following a review of the case, an appeal can be made to the Fourth Circuit Court of Appeals. If this court denies the prisoner relief, an additional request can be made to the United States Supreme Court to consider the case.

There are three restrictions faced by condemned prisoners during the review process that have caused some to question whether justice in the appeals process is being sacrificed for expediency. First, if at any point during the appeals process, the prisoner complains of an error in his trial that was not identified and raised at each and every step of the process, the court is barred from considering the violation. This is referred to as the doctrine of procedural default.

Second, when the Supreme Court announces a new rule of criminal procedure, that rule only applies to the case in which the rule originated and all subsequent cases.

It does not apply retroactively to those cases in which the direct review was completed before the rule was announced. This is referred to as the doctrine of non-retroactivity.

Third, Virginia currently applies a 21-day rule to the appeals process. Under this rule, Virginia courts can not consider any new evidence of innocence that is introduced 21 days after the defendant receives a final sentence in Circuit Court. Cases that violate the 21-day rule can be petitioned to the Governor for clemency. If the evidence is sufficiently persuasive, the Governor can commute the death sentences, but the prisoners cannot be granted a new trial.

Disparity Between Jurisdictions in the Use of the Death Penalty

At the time the death penalty was reinstated in the Commonwealth in 1977, there were five definitions of capital murder for which the death penalty could be granted. Since that time, the statute has been expanded to include 20 definitions of capital murder that qualify the accused for the death penalty.

The decision of whether to pursue the death penalty for persons with the appropriate capital offenses is left to the discretion of local prosecutors. While prosecutors have stated that they are guided by statute when making such decisions, some local jurisdictions are clearly more aggressive than others in seeking the death penalty. For example, between 1978 and 1997, the proportion of capital cases for which the death penalty was pursued by various jurisdictions ranged from a low of 12 percent to a high of 64 percent.

Potential Study Issues

The issues considered in this paper could be addressed in two separate studies. Regarding the judicial review process the following questions are raised:

- What proportion of death penalty cases in Virginia have been adversely affected by the doctrines of procedural default, non-retroactivity, and the 21-day rule? How were these cases ultimately resolved?
- Does it appear the clemency review by the Governor is a reasonable and appropriate check in the review process? Or, is there data that indicate that some prisoners have been executed or remain on death row despite the existence of evidence that raises questions about their guilt.
- Is DNA evidence consistently and appropriately used?

Questions surrounding jurisdictional variation in applying the death penalty include:

- What factors have the greatest impact on the decision of local prosecutors to pursue the death penalty in capital cases?
- Are these factors consistent with the requirements of State law or do they represent extra-legal considerations on the part of local prosecutors?
- Do localities utilize DNA evidence in a consistent and appropriate manner?

Proposed Study Approach

Specific plans and schedules for study completion would be presented to the Commission at its April 2001 planning meeting.

EXPANDED JLARC EDUCATION STUDIES: TEACHER SHORTAGE AND ABILITY-TO-PAY ISSUES IN THE JLARC REVIEW OF ELEMENTARY AND SECONDARY SCHOOL FUNDING

The topic selection subcommittee of JLARC indicated its desire that the JLARC review of elementary and secondary school funding consider the issues of teacher shortages and local ability-to-pay. Certain aspects of these issues will be addressed as part of the funding study. The scope of these issues as addressed by the funding study is discussed below.

Background

At the May 2000 meeting, the Commission directed JLARC staff to conduct a study of elementary and secondary school funding. This study is to be reported in August 2001.

The central focus of the study is upon local expenditures for elementary and secondary school education that exceed the State's Standards of Quality (SOQ). Local governments have expressed their view that the State has not been a full partner in funding a high quality education. Therefore, many localities and school divisions indicate that they make substantial expenditures that go beyond the SOQ. The JLARC review will seek to identify the key cost categories in which localities spend above SOQ cost levels, determine the amount that is spent by category, and conduct an analysis to develop State funding options.

The teacher shortage issue will be examined as part of the study, from the standpoint of this factor's recent impact upon educational expenditures. School divisions indicate that their need to compete for and retain personnel has put an upward pressure on compensation levels. JLARC staff will be examining the teacher shortage issue from the perspective of what types of positions or subject areas are most impacted, whether there are particular regions or school divisions that have been most impacted, and whether there is evidence that this issue has impacted compensation levels.

Although it is not a focal point of the review, measuring the ability of localities to pay for education costs will also be examined as part of the study. The study will consider how well the composite index performs today in assessing the ability of localities to raise revenues for public education. The study will consider whether there are any particular types of localities for which the composite index may perform less well than others – for example, are there any distortions in the ability-to-pay that is calculated for particularly small rural school divisions, or particularly large urban school divisions? There are other measures available besides the composite index that can be used for the purpose of measuring local ability-to-pay. These alternative measures will be assessed as part of the study and potentially used in some funding options.

Teacher Shortage Issues

1. Are there particular subject areas in which the teacher shortage issue is of greatest concern? Do localities use any incentives or differentials in compensation to recruit and retain personnel in shortage areas?
2. Are there particular regions of the State or particular school divisions that appear to be facing especially serious teacher recruitment and retention problems?
3. Is there evidence that a national, regional, or in-State competition for teachers has had an impact on the teacher compensation levels that are offered by localities?

Local Ability-to-Pay Issues

1. What proportion of State funds are currently disbursed based on local ability-to-pay?
2. Are there any adjustments that could be made to the composite index, or are there any alternative measures, that could more accurately reflect the extent to which localities are able to rely on different revenue sources in raising funds for elementary and secondary education?
3. Are there problems with how ability-to-pay is currently measured for localities at the extremes – for example, for particularly small, rural localities, or particularly large, urban localities?
4. Should local tax effort as well as local ability-to-pay be considered in distributing funds?